

Attachment C



Public Utility Commission of Texas

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TO: Chairman Pat Wood, III
Commissioner Judy Walsh
Commissioner Brett A. Perlman

All Parties of Record

FROM: Paul Hudson *[Signature]*
Office of Policy Development

RE: *Draft Preliminary Order, Docket No. 20334, SOAH Docket No. 473-99-0155, Emergency Petition of the Advisory Commission on State Emergency Communications and the Greater Harris County 9-1-1 Emergency Network for Declaratory Rulings Ordering Southwestern Bell Telephone Company to Unbundle its 9-1-1 Network and 9-1-1 Database Management System.*

DATE: March 18, 1999

Please find enclosed the draft preliminary order filed by the Office of Policy Development (OPD) in the above-referenced docket. The Commission will consider this draft preliminary order at the open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to consideration of the matter at the March 25, 1999 open meeting.

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EMERGENCY PETITION OF THE §
ADVISORY COMMISSION ON STATE §
EMERGENCY COMMUNICATIONS §
AND THE GREATER HARRIS COUNTY § PUBLIC UTILITY COMMISSION
9-1-1 EMERGENCY NETWORK FOR §
DECLARATORY RULINGS ORDERING § OF TEXAS
SOUTHWESTERN BELL TELEPHONE §
COMPANY TO UNBUNDLE ITS 9-1-1 §
NETWORK AND 9-1-1 DATABASE §
MANAGEMENT SYSTEM §

DRAFT PRELIMINARY ORDER

On January 15, 1999, the Advisory Commission on State Emergency Communication (ACSEC) and the Greater Harris County 9-1-1 Emergency Network (GHCCEN) filed for emergency declaratory rulings ordering Southwestern Bell Telephone Company (SWBT) to:

- Provide unbundled access to its 9-1-1 network and 9-1-1 database management system (911 DBMS); and
- Permit other providers direct access to the SWBT 9-1-1 tandem switch to permit real-time data interjection for the purpose of the real-time routing of 9-1-1 calls.

I. Procedural History

The Public Utility Commission of Texas (Commission) referred this matter to the State Office of Administrative Hearings (SOAH) on January 20, 1999. On February 4, 1999, General Counsel, SWBT, ACSEC/GHCEN and SCC filed their lists of proposed issues. On February 8, 1999, the Office of Policy Development issued an Order Requesting Briefing on Threshold Legal/Policy Issues. General Counsel, SWBT, ACSEC/GHCEN and SCC filed briefs on these threshold legal/policy issues on February 12, 1999.

-II. Background

SCC is a database management company under contract with ACSEC to provide an enhanced 9-1-1 database management system (DBMS) in a multi-competitor, multi-provider environment. SCC and SWBT engaged in negotiations to find a mutually agreeable network configuration so that SCC and ACSEC/GHCEN can conduct a pilot project testing this system. ACSEC/GHCEN allege that PURA gives the Commission the authority to order unbundling. ACSEC/GHCEN also allege that SWBT refuses to allow the necessary access to its 9-1-1 tandem switch to connect the DBMS. ACSEC/GHCEN contend that access is necessary to provide real time, automatic location identification (ALI) based selective routing.

SWBT alleges that the SCC proposal is not technically feasible and, even if it could be done, requiring interconnection and access to its tandem switch would diminish the integrity of 9-1-1 service to the public. SWBT also alleges that PURA and the FTA do not require SWBT to interconnect with SCC or to query a third party database to determine 9-1-1 call routing.

II. Issues to be Addressed

Pursuant to TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 1999), the Commission will provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to the SOAH. This preliminary order will address only those threshold legal/policy issues from the Briefing Order of February 8, 1999. A Supplemental Preliminary Order addressing issues of fact will be issued subsequent to the March 25, 1999 Open Meeting.

III. Threshold Legal/Policy Determination

On February 8, 1999 the Commission issued an order requesting briefs on six legal/policy threshold issues. ACSEC/GHCEN, SWBT, SCC, and General Counsel filed briefs on these threshold issues. The Commission makes its determination on the following threshold legal/policy issues pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN. § 2001.058(c) (Vernon 1999).

THRESHOLD QUESTIONS 1, 5, AND 6

1. Is SWBT obligated under state or federal law to provide unbundled access to its 9-1-1 network and 9-1-1 database management system services?
5. Are third parties that provide 9-1-1 database services required to obtain an appropriate certificate in order to interconnect under section 251(c) of the federal Telecommunications Act of 1996?
6. How does the FCC's 9-1-1 Forbearance Order impact this case, if at all?

POSITION OF THE PARTIES

ACSEC/GHCEN posit that under PURA¹ § 60.022, the Commission can order SWBT to provide unbundled access to its 9-1-1 network and 9-1-1 DBMS. PURA § 60.022 generally states that the Commission may order unbundling of local exchange company services upon contemplation of the public interest and competitive merits. If SWBT is not required to unbundle, ACSEC/GHCEN argues, then the 9-1-1 agencies may not receive all of the technological benefits of competition contemplated by state and federal lawmakers.

SWBT argues that FTA § 251²(c)(3) requires unbundling to further competition only between "telecommunications carriers." Because all parties agree SCC is not currently a telecommunications carrier, SWBT contends that FTA § 251 does not require unbundling. SWBT also states that FTA § 251(c)(2) limits interconnection to requesting telecommunications carriers, and that state law only requires interconnection between certificated telecommunications utilities (CTUs).³ Because SCC is not currently a CTU under state law or certificated telecommunications carrier under federal law, SWBT contends that PURA and FTA do not require interconnection.

¹ Public Utility Regulatory Act. TEX. UTIL. CODE ANN. §§ 11.001-63.063 (Vernon 1999) (PURA).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

³ PURA § 60.124 requires interoperable networks; P.U.C. Subst. R. § 23.97(a) requires interconnections between telecommunications service providers to provide interoperable networks.

SCC contends that the FCC's *Forbearance Order*⁴ and PURA aim to make system elements available to competitors. SCC relies on PURA § 60.022(b),⁵ which authorizes the Commission to unbundle any network element after it considers the public interest and competitive merits of further unbundling. SCC also claims that, although this case does not fit the ILEC/CLEC competitive paradigm, given that 9-1-1 is a unique network, the Commission should grant the requested relief even though SCC is not a CTU.

General Counsel posits that under PURA and FTA § 251(c), SCC would be entitled to interconnection after SCC is certificated. General Counsel argues that SCC may file for a certificate under PURA § 54.154,⁶ which is intended for "innovative, competitive, and entrepreneurial business[es] to provide telecommunications services." General Counsel also points to Docket No. 19621⁷ as laying the predicate for granting SCC a certificate.

Discussion

Unbundling

Authority for requiring unbundled access to the 9-1-1 network and 9-1-1 database management systems rests in Chapter 60 of PURA. PURA § 60.021 states "at a minimum, an [ILEC] shall unbundle its network to the extent the [FCC] orders." PURA § 60.022(a) allows unbundling beyond what the FCC orders. PURA § 60.022(b) requires that the Commission "consider the public interest and competitive merits of further unbundling."

⁴ *In the Matters of Bell Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, CC Docket No. 96-149, Memorandum Opinion and Order, (February 6, 1998) (*Forbearance Order*).

⁵ PURA 60.022(b) states "before ordering further unbundling, the Commission must consider the public interest and competitive merits of further unbundling."

⁶ PURA § 54.154(a) states: "The Commission may grant a certificate to encourage an innovative, competitive, and entrepreneurial business to provide telecommunications services."

⁷ *Application of Dakota Services Ltd. For a Service Provider Certificate of Operating Authority*, Docket No. 19621 (Jan. 13, 1999). (Docket No. 19621). There, the commission granted an SPCOA to a telecommunications company providing data services only.

The Commission's authority to order further unbundling has previously been affirmed in federal district court⁸ with regard to unbundling dark fiber and subloop, elements beyond the basic seven unbundled network elements delineated by the FCC.⁹ SCC's access to SWBT's unbundled 9-1-1 network and database management systems will require an interconnection agreement between SWBT and SCC.

Certification

Selective routing, as part of the 9-1-1 network, is a necessary element of basic local telecommunications service, as defined by PURA § 51.002(1)(E),¹⁰ as well as a basic network service, as defined by PURA § 58.051(8).¹¹

In *Dakota*, the Commission granted an SPCOA to an entity proposing to provide data-only service. The Commission determined that Dakota's provision of xDSL data over an ILEC's network constituted an element of basic local service; therefore, Dakota was required to obtain an SPCOA.¹² By analogy, because SCC will provide a portion of the network necessary to

⁸ *Southwestern Bell Telephone Co. v. AT&T*, No. A97-CA-132 SS, 1998 U.S. Dist. LEXIS 15637, at 10 (W.D. Tex., Aug. 31 1998).

⁹ The seven elements include: the local loop, network interface device, switching capability, interoffice transmission facilities, signaling networks and call related databases, operations support systems functions, and operator services and directory assistance.

¹⁰ PURA § 51.002(1)(E) states that basic local telecommunications service means "access to 911 service provided by a local authority or dual party relay service."

¹¹ PURA § 58.051(8) defines "access to 911 service provided by a local authority or dual party relay service" as part of the services included in basic network services.

¹² Docket No. 19621, Order on Certified Issues at 3 (Jan. 13, 1999).

provide basic local service,¹³ it must obtain a certificate as required by PURA 54.001.¹⁴ If SCC seeks an SPCOA, the Commission may consider the criteria specified in PURA § 54.154.¹⁵

Interconnecting

A certificated telecommunications utility may interconnect under PURA § 55.008(2) to provide telecommunication service. Further, as a CTU, SCC may request interconnection under the federal Telecommunications Act of 1996.

The *Forbearance Order* narrowly defined the ALI function of a 9-1-1 network as an information service.¹⁶ However, the selective routing function was not addressed in that order. The Commission determines that selective routing is an element of basic telecommunications service. Under FTA § 251, interconnection is required between telecommunications carriers. If SCC obtains the proper SPCOA, then it is eligible for interconnection.

THRESHOLD QUESTIONS 2 AND 3

2. Is SWBT obligated under state or federal law to allow other providers direct access to SWBT's 9-1-1 tandem to permit real time data interjection for the purpose of real time routing of 9-1-1 calls?
4. Is the Commission's ruling in the Mega-Arbitration I proceeding that "SWBT is not required to allow signaling system 7 (SS7) advanced intelligent access from MCP's service control point" dispositive in this matter?

¹³ PURA § 51.002 includes *inter alia*, providing "access to 9-1-1 service provided by a local authority or dual party relay service" as part of basic local telecommunications service.

¹⁴ PURA § 54.001 states that "a person may not provide local exchange service, basic local telecommunications service, or switched access service unless the person obtains a: (1) certificate of convenience and necessity; (2) certificate of operating authority; or (3) service provider certificate of operating authority."

¹⁵ PURA § 54.154 states that certification is available for "innovative, competitive, and entrepreneurial businesses to provide telecommunications services."

¹⁶ *Forbearance Order* at ¶ 17.

POSITION OF THE PARTIES

ACSEC/GHCEN argue that *Mega-Arbitration I*¹⁷ is not dispositive of the issue of SCC's routing of 9-1-1 calls. ACSEC/GHCEN posit that the Commission intended to leave the issue open for future consideration.¹⁸ ACSEC/GHCEN also posit that an arbitration is a private resolution between involved parties.

SWBT states that neither state nor federal law explicitly require SWBT to route calls using the instructions of a third party database provider. In fact, SWBT avers that the Commission's finding in *Mega-Arbitration I* that "SWBT is not required to allow Signaling System 7 (SS7) advanced intelligent access from MCI's Service Control Point" is dispositive of this matter.¹⁹

SCC claims that *Mega-Arbitration I* is not dispositive of the issue of SCC's routing of 9-1-1 calls. SCC notes that the scope of their deployment is far more limited than the MCI proposal rejected by the Commission in *Mega-Arbitration I*. There, SCC posits that MCI had requested its service control point to control certain operations within SWBT's switch so MCI could use SWBT's switch as a platform on which to provide a variety of services different from or in addition to those inherently supported by SWBT's switch.

With regard to *Mega-Arbitration I*, General Counsel indicates that to the extent that industry standards have been established concerning connectivity of ILEC switches with local service provider service control points (SCPs), parties may petition the Commission to require SWBT to provide connectivity. In the absence of such standards, General Counsel avers that the *Mega-Arbitration I* proceeding is dispositive on the issue of direct access and control of SWBT's

¹⁷ *Petition of MFS Communications Co. Inc. for Arbitration of Pricing of Unbundled Loops*, Consolidated Docket Nos. 16189 et al., (Nov. 7, 1996). (*Mega-Arbitration I*). In *Mega-Arbitration I*, the Commission stated, "when industry standards are established concerning connectivity of ILEC switches with local service provider service control points, parties may petition the Commission to require SWBT to provide such connectivity."

¹⁸ *Mega-Arbitration I* order at 7.

9-1-1 tandem switch through SCCs' SCP. General Counsel believes that if SCC seeks access through a signal transfer point, however, then *Mega-Arbitration I* may not be dispositive in this case.

Discussion

Mega-Arbitration I only touched on the issue of access and routing. There the Commission stated "SWBT is not required to allow signaling system 7 (SS7) advanced intelligent access from MCI's service control point."²⁰ However, in that case MCI sought access to SWBT's switching facilities for the purpose of controlling certain operations. In the instant case, SWBT would query the SCC database for routing instructions only in the case of a 9-1-1 call.

The Commission concludes that its decision in *Mega-Arbitration I* may not be dispositive here. In rendering this conclusion, the Commission notes that it also left the issue open for further consideration in *Mega-Arbitration I*, stating, "When industry standards are established concerning connectivity of ILEC switches with local service provider SCPs, parties may petition the Commission to require SWBT to provide connectivity."²¹ Although the Commission determines that SWBT is required to allow SCC access to the 9-1-1 tandem switch, factual issues remain with regard to whether SWBT is required to route calls per SCC's instruction. At this time, the Commission chooses not to issue a finding as to SCC's control of this selective routing function until a factual record is developed.

THRESHOLD QUESTION 3

3. Is SWBT obligated under and/or prohibited by state or federal law to disclose customer proprietary network information to a third party database provider to maintain the state's 9-1-1 database and route 9-1-1 calls?

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

POSITION OF THE PARTIES

SWBT posits that it is prohibited by FTA § 222²² from disclosing CPNI to unaffiliated parties without the customer's consent. SWBT has offered, however, to provide a service order extract containing the information required by the FCC's *Forbearance Order* (subscriber list information) twice a day.

SCC requests access to the SWBT service order system (SORD)²³ to "maintain the state's 9-1-1 database and route 9-1-1 calls." SORD contains CPNI. SCC posits that state and federal law do not prohibit SWBT from disclosing CPNI to a third party database provider based on FTA § 222(c)(1)(B), the *CPNI Order*,²⁴ the *Caller ID Order*,²⁵ and the *Forbearance Order*.²⁶

ACSEC/GHCEN posit that no CPNI is necessary to route 9-1-1 calls, asserting that 9-1-1 call routing is based solely on telephone numbers (TNs) and emergency service numbers (ESNs). They contend that CPNI is an issue in the context of "read-only access" for 9-1-1 database verification and validation purposes.

This issue was not included in ACSEC/GHCEN's original petition for declaratory rulings and petitioners asked to defer briefing on the "read-only access" issue until a later time should the Commission wish to consider the issue in this docket.

²² Section 222(c)(1) states "Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains CPNI by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable CPNI in its provision of (A) the telecommunications service from which such information is derived, or (B) services, necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

²³ SWBT's SORD system contains subscriber list information and CPNI and is used to make changes to service, for billing, and other administrative activities.

²⁴ *Implementation of the Telecommunications Act of 1996 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Second Report and Order, and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061 at ¶¶ 74, 80 (1998)

²⁵ *Rules and Policies Regarding Calling Number Identification Service-Caller ID*, CC Docket No. 91-281, *Memorandum Opinion and Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, 10 FCC Rcd 11700, 11740 at ¶ 111 (1995)

General Counsel argues that subscriber list information does not fall under the definition of CPNI under the FTA and therefore, such information must be provided by SWBT as required in the *Forbearance Order*. General Counsel also notes that FTA § 222 defines CPNI and permits carriers to use, disclose or permit access to such information without prior customer approval in very limited circumstances.

Discussion

Subscriber list information is defined by the FCC's *Forbearance Order* as "all listing information, including unlisted and unpublished numbers as well as the numbers of other LECs customers, that it uses to provide E911 services".²⁷ Therefore, subscriber list information encompasses ALL.

CPNI is defined as "information that relates to the quantity, technical configuration, type, destination and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier solely by virtue of the carrier customer relationship."²⁸ CPNI excludes subscriber list information.²⁹ According to the FCC's *Forbearance Order*, SWBT must provide subscriber list information to unaffiliated entities.³⁰

SCC may require access to the SWBT SORD system to provide real-time updates of its database.³¹ This entails access to CPNI. Though FTA § 222(c) limits access to CPNI, SCC may qualify to receive this information under FTA § 222(b). FTA § 222(b) states "a telecommunications carrier that receives or obtains proprietary information from another carrier

²⁷ *Forbearance Order* at ¶ 28.

²⁸ FTA § 222(f)(1)(A).

²⁹ FTA § 222(f)(1).

³⁰ *Forbearance Order* at ¶ 34.

³¹ ACSEC envisions real-time updating of information as opposed to the batch updating offered by SWBT.

for purposes of providing any telecommunications service shall use such information only for such purpose...."

For these reasons, based on the *Forbearance Order*, SWBT is required to provide SCC with subscriber list information on a parity basis for the purposes of establishing and updating the 9-1-1 database. Based on the factual outcome, the SOAH ALJ will determine what SCC requires as well as the legal basis for granting access to SWBT's SORD system (and thus CPNI).

IV. Summary of Threshold Legal/Policy Determinations:

1. Is SWBT obligated under state or federal law to provide unbundled access to its 9-1-1 network and 9-1-1 database management system services?

Under state and federal law, SWBT is obligated to unbundle access to its network and interconnect with SCC. SCC must obtain a certificate, however, to provide its services.

2. Is SWBT obligated under state or federal law to allow other providers direct access to SWBT's 9-1-1 tandem to permit real time data interjection for the purpose of real time routing of 9-1-1 calls?

SWBT is obligated to provide direct access to ALI; however, the Commission declines to rule at this time whether SWBT is required to permit real time data interjection for the purpose of real time routing of calls. This ruling depends on answers to factual questions.

3. Is SWBT obligated under and/or prohibited by state or federal law to disclose customer proprietary network information to a third party database provider to maintain the state's 9-1-1 database and route 9-1-1 calls?

Based on the *Forbearance Order*, SWBT is required to provide SCC with subscriber list information on a parity basis for the purposes of establishing and updating the 9-1-1 database. The SOAH ALJ will factually determine what information SCC needs from SWBT to provide its service, as well as whether SCC may access SWBT's SORD system (and thus CPNI) as a legal matter.

4. Is the Commission's ruling in the Mega-Arbitration I proceeding that "SWBT is not required to allow signaling system 7 (SS7) advanced intelligent access from MCI's service control point" dispositive in this matter?

See answer to No. 2.

5. Are third parties that provide 9-1-1 database services required to obtain an appropriate certificate in order to interconnect under § 251(c) of the federal Telecommunications Act of 1996?

SCC is required to obtain a certificate because it is providing the selective routing function, a necessary element of basic local service. A certificate is required in order to interconnect under § 251(c) of the federal Telecommunications Act of 1996.

6. How does the FCC's 9-1-1 Forbearance Order impact this case, if at all?

The *Forbearance Order* is an integral part of this case; it defines the ALI function of DBMS as information service. While it does not address the selective routing function, this Commission determines the selective routing function is a telecommunications service. The *Forbearance Order* requires SWBT to provide subscriber list information at parity, that is, at the level that it provides such information to itself.

V. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding threshold legal and policy issues should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the day of March, 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER

BRETT A. PERLMAN, COMMISSIONER